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OCT 05 2004

OFFICE OF PETITIONS

In re Application of	:	
Goldfield et al.	:	
Application No. 10/751,194	:	DECISION REFUSING STATUS
Filed: December 31, 2003	:	UNDER 37 CFR 1.47(a)
Attorney Docket No. 16319-08173	:	

This is in response to the petition under 37 CFR 1.47(a), filed September 7, 2004. Applicants obtained a two-month extension of time to reply. Accordingly, the petition is filed timely.

The petition is dismissed.

Applicants are given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on December 31, 2003, without an executed oath or declaration. Accordingly, on May 7, 2004, the Office mailed a "Notice to File Missing Parts of Nonprovisional Application," requiring an executed oath or declaration and a surcharge for its late filing.

In response, on September 7, 2004, applicants filed the present petition, a declaration signed by two of the four joint inventors, a request for a two-month extension of time to reply, and paid the necessary fees.

In the Declaration of Facts, Mike Graves stated that on two separate occasions he sent both David Murray and Todd Haseyama UPS packages containing an Assignment, a Combined Declaration and Power of Attorney, and a cover letter requesting that they execute the documents. UPS Tracking Information indicated that the packages were delivered to the inventors.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicants lack item (1) as set forth above.

As to item (1), it is unclear from the record whether inventors Murray and Haseyama were presented with a complete copy of the application papers. Unless the inventors were presented with a complete copy of the application papers, including the specification, claims and drawings, they could not attest that they have "reviewed and understand[] the application papers," and therefore, could not sign the declarations that they were given. Accordingly, applicants failed to show or provide proof that the nonsigning inventors have refused to sign the declaration. See MPEP 409.03(d). To show that the inventors have refused to join in the application, applicants must show that complete copies of the application papers, including the specification, claims and drawings, were presented to inventors Murray and Haseyama, personally or through their designated representatives, and that they did not respond to the requests that they sign the declarations.

Further correspondence with respect to this matter should be addressed as follows and **to the attention of Christina Tartera Donnell, Petitions Attorney:**

By mail: Commissioner for Patents
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Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions
